IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19-09-2005

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THE HONOURABLE MR. JUSTICE P.K. MISRA

Writ Petition No.6787 of 1998

M/s. Neyveli Lignite Corporation
Ltd., Neyveli,
Rep. by its Company Secretary .. Petitioner

Vs.

1. Government of Tamilnadu,
rep. by Commissioner & Secretary,
Department of Home (Transport),
Fort St. George, Chennai 9.

2. The Transport Commissioner,
Chepauk, Chennai 5.

3. The Regional Transport Officer,
Cuddalore District,
Cuddalore-1. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus calling for the records in Letter No.135410/Transport-I/95-12 dated 21.4.1998 on the file of the first respondent herein conforming the order in R.No.C-3/44267/97 dated 6.1.98, on the file of the 3rd respondent herein and quash the same and direct the respondents herein to make tax exemption endorsement in the R.C.Books of the transport vehicles of the petitioner Corporation which are plying on the private roads of the petitioners' Corporation.

For Petitioner : Mr.N.A.K. Sarma

For Respondents : Mr.S. Gomathynayagam
Special Govt. Pleader

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J U D G M E N T

The present writ petition has been filed by M/s.Neyveli Lignite Corporation Limited, hereinafter referred to as "the Corporation". The aforesaid Corporation is a Government of India undertaking, the primary business of which is to mine lignite from its two mines and generate electricity from its Thermal Power Stations and production of Urea, Leco and other commercial by-products. Two mines, Thermal Power Stations and others were located in the area owned by the Corporation. There is a Township meant for its employees over an extent of about 650 acres of land inhabited by about two lakhs persons. To provide transport facilities for the employees and their family members, including the school going children, the Corporation has evolved a transport system. Such system consists of transport and non-transport vehicles. The transport vehicles are of two categories, namely, goods carriage vehicles and stage carriage vehicles, which are solely and exclusively used in the private roads constructed and maintained by the Corporation within its own area and such vehicles are not used nor kept in use in any public road, outside the area belonging to the Corporation. The present writ petition relates to the vehicles which are exclusively used inside the area belonging to the Corporation and have no occasion to go on the public roads. From the very inception, such vehicles plying on the private roads within the area belonging to the Corporation have been exempted from payment of tax leviable under the Tamil Nadu Motor Vehicles taxation Act. While the matter stood thus, the third respondent, namely, the Regional Transport Officer of Cuddalore district issued demand notice in R.No.C-3/44267/97 dated 6.1.1998 calling upon the Corporation to pay road tax of Rs.4,28,02,292/- for the period from 1.4.1985 to 31.3.1998 in respect of 243 vehicles which were plying within the private roads of the Corporation. The said notice was purportedly issued under Section 3 of the Tamil Nadu Motor Vehicles Taxation Act, 1974. The Corporation filed a representation to the first respondent, namely, the Government of Tamil Nadu, against such demand notice dated 6.1.1998 on the ground that such notice was contrary to the provisions of the Central Motor Vehicles Act as well as Tamil Nadu Motor Vehicles Taxation Act, 1974 (hereinafter referred to as "the M.V. Taxation Act"). In the representation, the Corporation's request was to continue the exemption from payment of motor vehicle tax. The first respondent, however, denied such prayer by letter No.135410/Transport-I/95-12 dated 21.4.98. The relevant portion of such letter is to the following effect:-

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> "... I am directed to refer your letter second cited and to state that the Government have examined your request to exempt the stage carriages and goods vehicles plying within the private premises of Neyveli Lignite Corporation Limited, from payment of Motor Vehicles tax as was done prior to 1985. The request is not admissable in terms of the provisions under section 3 of the Tamil Nadu Motor Vehicle Taxation Act 1974. Besides, Government's competence to levy tax with effect from 1985 has been upheld by the High Court, in its orders dated 6.1.95, in W.P.No.8055/85."

The petitioner has sought for quashing the order contained in letter dated 21.4.1998.

2. Before adverting to the main contentions raised in the writ petition, it is also necessary to take note of the earlier cases on the same question and also take note of certain earlier orders passed by the Government. The Government had issued G.O.Ms.2616 dated 28.7.1962 and G.O.Ms.No.1581 dated 9.5.1963 giving exemption from securing permit and payment of tax in respect of the vehicles plying within the private roads of the Corporation and also the vehicles, which were using the public roads only for the purpose of going to Regional Transport Office for obtaining fitness certificate. In G.O.Ms.No.2742 dated 19.11.1981, the Government had called upon the owners of the vehicles throughout the State including the Corporation to submit details of the vehicles plying on the private roads and the Corporation had submitted all necessary details seeking exemption in respect of such vehicles. The Corporation was submitting details of the vehicles which were used and kept for use on the private roads and was obtaining exemption from securing permit and payment of tax from time to time. Subsequently, the respondents relying upon G.O.Ms.No.932 dated 16.4.1985 insisted upon the Corporation to pay tax for the vehicles which are plying only within the private roads and occasionally touching the public roads to reach Mine No.2 with retrospective effect from 1.4.1974, the date on which the Tamil Nadu Motor Vehicles Taxation Act came into force. At that stage, the Corporation filed W.P.No.8055 of 1985 challenging the validity of the said G.O. Such writ petition was disposed of on 6.1.1995. In paragraph 5 of such judgment, the following observation was made :-

> "In 1974 Motor Vehicles Taxation Act 1931

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was repealed and new Act was passed. Under the provisions of the new Act tax was payable even if a vehicle is kept or used. The charging section as it stood then provided for levy of tax with respect of vehicles which were kept or used. An amendment was brought into force in 1983 by which the words "kept or used" were substituted by the word "used or kept for use". A question arose whether the vehicles which were used and kept for use in private roads were liable for payment of tax. It was held by this Court that such vehicles are not liable and only vehicles which were used and kept for use in public roads were liable for payment of tax."

(Emphasis added)

3. After the said judgment was rendered, the Corporation paid tax with retrospective effect in respect of vehicles which were using the public roads occasionally. According to the Corporation, it is not liable to pay tax for the vehicles which use the roads constructed and maintained by the Corporation within its own area. However, misconstruing the said decision, the Government have issued the impugned orders calling upon the petitioner Corporation to pay road tax. After the decision was rendered in the said case, the petitioner Corporation has made several representations dated 6.2.95, 25.3.95, 29.7.96, 12.8.96 and 28.6.97 requesting for making tax exemption endorsement in respect of the vehicles which are used only within the Township or within the own area of the Corporation without ever using the public roads, outside the area of the Corporation. It is stated by the petitioner that in fact the second respondent by letter dated 13.10.1995 had recommended to grant exemption in respect of such vehicles. The petitioner had filed W.P.No.6354 of 1998 against the impugned orders, but at that stage it was felt that an appeal provision was available under the M.V. Taxation Act. The petitioner has however submitted that as a representation had been filed before the State Government and the State Government had issued the impugned letter dated 21.4.1998, the filing of appeal before the appellate authority, which was a subordinate authority of the State, would have been an exercise in futility, and, therefore, the present writ petition has been filed.

4. The main contention of the petitioner is to the effect that since the vehicles are plying only on the private roads of the Corporation, no tax is leviable.

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5. No counter affidavit has been filed on behalf of the respondents.

6. In course of hearing, the main submission made by the Special Government Pleader representing the Government is to the effect that tax is leviable in respect of the vehicles used or kept in use within Tamil Nadu as apparent from Section 3 of the M.V. Taxation Act, 1974. Therefore, the Corporation is liable to pay tax. It is also contended by him that the Corporation is charging certain amount from the persons using such vehicles, and, therefore, cannot claim any exemption.

7. Section 3 of the Tamil Nadu Motor Vehicles Taxation Act, 1974 provides that tax shall be levied on every motor vehicle used or kept for use in the State of Tamil Nadu. Entry 35 of List III in Schedule VII of the Constitution (Concurrent List) relates to "mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied". Entry 57 of List II of Schedule VII in the State List relates to taxation for the vehicles whether mechanically propelled or not, suitable for use on roads, including tramcars subject to the provisions of Entry 35 of List III.

(Emphasis added)

8. As observed by the Supreme Court in 1967 SC 1575 (STATE OF ASSAM AND OTHERS v. LABANVA PROBHA DEVI), while the matter of principles on which taxes on mechanically propelled vehicles are to be levied falls under Entry 35 of the List III, the power to tax vehicles belongs exclusively to the State Legislature under Entry 57 of the List II.

9. Levy of tax is on vehicles suitable for use on roads. Such tax is being compensatory in nature, the State's power to levy tax must have some nexus with the vehicles using the public roads of the State as it is compensatory in nature. This position is clear in view of several decisions of the Supreme Court.

10. In A.I.R. 1975 SC 17 (BOLANI ORES LTD., v. STATE OF ORISSA), after referring to Motor Vehicles Taxation Act of various States, including that of Madras, it was observed:-

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"15. ... The Motor Vehicles Taxation Acts are enacted in exercise of the powers conferred on the State Legislatures under entry 57 of List II of the Seventh Schedule to the Constitution, while the Motor Vehicles Act is enacted by the Parliament in exercise of the concurrent legislative power in entry 35 of List III of the Seventh Schedule to the Constitution. Entry 57 of List II empowers legislation in respect of taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars subject to the provisions of entry 35 of List III. The power exercisable under entry 57 is the power to impose taxes which are in the nature of regulatory and compensatory measures. The regulatory and compensatory nature of the tax is that the taxing power should be exercised to impose taxes on motor vehicles which use the roads in the State or are kept for use thereon either throughout the whole area or parts thereof and are sufficient to make and maintain such roads. ..."

It was further observed :-

"29. The Taxation Act is a regulatory measure imposing compensatory taxes for the purpose of raising revenue to meet the expenditure for making roads, maintaining them and for facilitating the movement and regulation of traffic. The validity of the taxing power under Entry 57, List II of the Seventh Schedule read with Art.301 of the Constitution depends upon the regulatory and compensatory nature of the taxes. It is not the purpose of the Taxation Act to levy taxes on vehicles which do not use the roads or in any way form part of the flow of traffic on the roads which is required to be regulated. The regulations under the Motor Vehicles Act for registration and prohibition of certain categories of vehicles being driven by persons who have no driving licence, even though those vehicles are not plying on the roads, are designed to ensure the safety of passengers and goods etc. etc. and for that purpose it is enacted to keep control and check on the vehicles. Legislative power under Entry 35 of List III (Concurrent List) does not bar such a provision. But Entry 57 of List II is subject to the limitations referred to above, namely, that

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the power of taxation thereunder cannot exceed the compensatory nature which must have some nexus with the vehicles using the roads, viz., public roads. If the vehicles do not use the roads, notwithstanding that they are registered under the Act, they cannot be taxed. This very concept is embodied in the provisions of Section 7 of the Taxation Act as also the relevant sections in the Taxation Acts of other States, namely, that where a motor vehicle is not using the roads and it is declared that it will not use the roads for any quarter or quarters of a year or for any particular year or years, no tax is leviable thereon and if any tax has been paid for any quarter during which it is not proposed to use the motor vehicle on the road, the tax for that quarter is refundable. ..."

(Emphasis added)

11. In A.I.R. 1980 SC 1547 (TRAVANCORE TEA CO. LTD. etc. etc., v. STATE OF KERALA AND OTHERS), the appellant company, which was a Tea Plantation Estate, was maintaining roads for vehicular traffic. The contention of the appellant was that the vehicles used on the private roads of the Estate were not liable to pay tax. Section 3 of the Kerala Motor Vehicles Taxation Act provided that tax shall be levied on all motor vehicles used or kept for use in the State (Similar to the provisions contained in the Tamil Nadu Motor Vehicles Act). The Supreme Court, while considering the question as to whether tax is leviable in respect of the motor vehicles used or kept for use within the Tea Estate not intended to be used on the public roads, has observed as follows :-

"5. Section 3 of the impugned Act (Kerala Motor Vehicles Taxation Act (Act 24 of 1963)) provides that a tax "shall be levied on all motor vehicles used or kept for use in the State." The levy is within the competence of the State legislature as entry 57 in List II authorises levy on vehicles suitable for use on roads. It has been laid down by this Court in Bolani Ores Ltd. v. State of Orissa, (1975) 2 SCR 138 at p. 155: (AIR 1975 SC 17) that under Entry 57 of List II, the power of taxation cannot exceed compensatory nature which must have some nexus with the vehicles using the roads i.e. public roads. If the vehicles do not use the roads, notwithstanding that they are registered under the Act they cannot be taxed.

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6. If the words 'used or kept for use in the State' are construed as used or kept for use on the public roads of the State, the Act would be in conformity with the powers conferred on, the State legislature under Entry 57 of List II."
(Emphasis added)

12. Similar views have been expressed by the Supreme Court in G.K.KRISHNAN Vs. STATE OF TAMIL NADU ((1975) 1 SCC 375) and in (2002) 7 SCC 245 (MAHAKOSHAL TOURIST, NAPIER TOWN AND OTHERS v. STATE OF M.P. AND OTHERS).

13. Applying the ratio of the aforesaid decisions to the present case, it is apparent that the contention raised on behalf of the petitioner must be accepted. There is no dispute relating to the fact that the vehicles in question are kept for use only within the area belonging to the Corporation and they are not intended to be used on any public road maintained by the State. The respondents have no where come to any conclusion nor raised any contention in the present case that in fact some of these vehicles are used on public roads outside the area belonging to the Corporation.

14. Learned counsel for the respondents has contended that even though the roads are within the area of the Corporation, public have an access to such roads, and, therefore, it must be taken that those roads are public roads. I am afraid such contention cannot be countenanced. It is no doubt true that at times the outsiders are also allowed inside the area of the Corporation. Even otherwise the inhabitants of the township within the area of the Corporation in a generic sense can be said to be members of the public and in that sense the private roads constructed and maintained by the Corporation can be said to be accessible to the public. However, in the context of Entry 57 of List II, the tax being leviable when the motor vehicle is used or kept for use on the roads within the State, it evidently means public roads maintained by the State or any other agency on behalf of the State. Where the roads are private roads belonging to a particular person or entity and the vehicles are exclusively used within such private area, such vehicles would not be liable to tax and such vehicles are entitled to get exemption as contemplated in the Act. It is made clear that even though such vehicles are required to be registered under the Motor Vehicles Act, such vehicles cannot be subjected to tax, provided of course necessary exemption is claimed in

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accordance with the provisions contained. It is further made clear that if there is any violation and the vehicles which are exempted are used on public roads belonging to the State lying beyond the area belonging to the Corporation, obviously the State Government would be entitled to levy tax as well as penalty.

15. The learned Special Government Pleader appearing for the respondents has placed reliance upon several decisions in support of his contentions. That the area within the Corporation is a 'Public Place' and since the vehicles use such public place, tax can be levied. The decision reported in G.BHUVANESWARI Vs. M.SORNAKUMAR (200 (1) CTC 145), is one such decision of the Division Bench of this Court. The said decision arose out of the claim comes under the Motor Vehicles Act 1988. The accident was caused by a tempo inside the factory, the Tribunal while awarding compensation, came to the conclusion that the accident occurred in a private place and therefore, the Insurance Company was not liable to pay the compensation under section 147 of the Motor vehicles Act. In appeal, the Division Bench relying upon the earlier Full Bench decision in the case of UNITED INDIA INSURANCE CO. LTD., Vs. PARVATHI DEVI & OTHERS, 1999 T.N.L.J. 144 held that public place includes places where public have an access whether free or control in any manner. For the aforesaid purpose, the Full Bench as well as the Division Bench has placed reliance on the expression of Public Place as contained in section 2(24) of the Motor Vehicles Act. In my considered opinion, the ratio of the aforesaid decisions has no application in the present case. The dispute in the present case is not as to whether the area within the Corporation is a public place within the meaning of section 2(24) of the Motor Vehicles act, the dispute is whether the vehicle exclusively being used on the private road belonging to the Corporation and not using any other road belong to the State Government can be subjected to levy of taxes. The question to be decided in the present case is whether the vehicle in question use any road of the State Government or use private road belonging to the Corporation.

16. Similar decisions reported in S.K.DUBEY Vs. NATIONAL INSURANCE CO. LTD., (A.I.R. 1998 Madhya pradesh 238) in the context of liability of the Insurance Company in respect of an accident occurring within private place is equally inapplicable for the very same reason.

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17. The learned Special Government Pleader has also placed reliance of the decision of the Supreme Court in THE STATE OF MYSORE Vs. SYED IBRAHIM (A.I.R. 1967 SC 1424). In the said decision, the respondent in the appeal before Supreme Court, was the owner of a Motor car. He had carried eight passengers in the said car and had collected Rs.5/- from those passengers. He was charge sheeted under section 42(1) read with section 123 of the Motor Vehicles Act 1939, on the ground that he has used the Transport Vehicle without permission as required under section 42(1). The Trial court as well as the High Court acquitted the respondent on the ground that the vehicle having been registered as a motor car was not 'Transport' as defined under section 2(16) and therefore, no prosecution would lie under section 42(1). Said view had been taken by the Trial Court as well as High Court by relying on the earlier decisions of the Mysore High Court. In paragraph 5, the Supreme Court has held as follows:

> "5. ... 'A transport vehicle' means 'a public service vehicle' and 'a public service vehicle' means any motor vehicle either used or adapted to be used for carriage of passengers for hire or reward. Therefore, any motor vehicle used for carriage of passengers for hire or reward is regarded. When so used as a public service vehicle and therefore a transport vehicle. It is the use of the motor vehicle for carrying passengers for hire or reward which determines the category of the motor vehicle whether it is adapted for that purpose or not. It must follow that even if a motor vehicle is occasionally used for carrying passengers for hire or reward it must be regarded when so used as a public service vehicle and therefore a transport vehicle and if it is so used without the necessary permit such use would be in breach of S.42(1) and the owner who uses it or permits it to be so used would be liable to be punished under S.42(1) read with S.123."

18. It is difficult to understand as to how the ratio of the aforesaid decision cannot at all be invoked for the purpose of deciding the question in dispute in the

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present writ petition. Even assuming that the vehicles belonging to the Corporation are used as 'transport vehicles', the question of payability of the road tax would arise upon the nature of user. If such vehicles do not use any road belonging to State, the tax is not leviable.

19. The learned Special Government Pleader has also relied on the decisions of the Supreme Court in STATE OF MAHARASHTRA Vs. MADHUKAR BALKRISHNA BADIYA ((1988) 4 SCC 290) wherein the validity of the Bombay Motor Vehicles Tax act, 1958 (as amended by Maharastra Act 14 of 1987, 33 of 1987 and 9 of 1988), about levy of one time tax had been upheld. In the said case, the absence of provision regarding refund in 14th or 15th year was highlighted by the aggrieved party in support of the contention that the tax was non-compensatory or non-regulatory and therefore illegal. Such contention was refuted by the Supreme Court. However, it is significant to note that even while refuting such contention, the Supreme Court relying upon earlier decisions including that of a case reported in Bolani Ores case and G.K.KRISHNAN Vs. STATE OF TAMIL NADU (cited supra) has observed in paragraph 4, as follows:

> "4. Before the contentions are judged, it is imperative to reiterate that the tax imposed on motor vehicles or a class of motor cycles would not be valid unless it is compensatory or regulatory or does not have any nexus with the vehicles using the public roads. In such a case the levy would be violative of Article 301 of the Constitution and would not be protected by Article 304 of the constitution. In this connection reference may first be made to the observations of this Court in *Bolani Ores Ltd. v. State of Orissa* where at page 155 (SCC pp.793-94) this Court observed that Entry 57 of List II of the seventh Schedule was subject to the limitations, namely the power of taxation cannot exceed the compensatory nature which must have some nexus with the vehicles using the roads. If the vehicles do not use the roads, notwithstanding that these are registered under the Act, these cannot be taxed. More or less the same view was echoed in G.K.Krishnan v.State of Tamilnadu."

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(Emphasis added)

The aforesaid observation in fact clearly indicates that no such tax can be levied unless the vehicles exclusively use the private road belonging to the person or the authority concerned. There is nothing in the said decision which in any way militates against the earlier decisions of the Supreme Court upon which reliance had been placed by the learned counsel for the petitioner.

20. Learned counsel appearing for the respondents has also contended that in the earlier decision between the parties, it has been found that the Corporation is liable to pay tax. On a careful reading of the said decision, I am unable to accept the contention of the learned counsel for the respondents. It is evident that in the said case the question was raised in respect of two categories of vehicles. One category of vehicles related to the vehicles which were occasionally using the public road belonging to the State either for the purpose of going to the Mine or at times using the public road for other purposes. So far as such category of vehicles are concerned, as indicated in paragraph 5 of the order passed in the writ petition, this Court was of the opinion that tax is payable, whereas in respect of other category of the vehicles which were claimed to be only used within the area belonging to the Corporation, the learned single Judge has accepted the contention that no tax is payable and had left the matter to be decided by the appropriate authority to come to a factual conclusion whether all those vehicles were being used or meant for use on public roads belonging to the State.

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21. For the aforesaid reasons, the contention raised by the writ petitioner is accepted and it is made clear that no tax is payable in respect of the vehicles used or kept for use on the private roads belonging to the Corporation. The writ petition is accordingly allowed. There would be no order as to costs.

dpk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. Government of Tamilnadu,
   rep. by Commissioner & Secretary,
   Department of Home (Transport),
   Fort St. George, Chennai 9.

2. The Transport Commissioner,
   Chepauk, Chennai 5.

3. The Regional Transport Officer,
   Cuddalore District,
   Cuddalore-1.

+ one cc to Mr. M.A.K. Sharma sr 43300

+ one cc to G.P. SR 39271

HPR(CO)
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